

**SUBPART 226.70--HISTORICALLY BLACK COLLEGES AND UNIVERSITIES
AND MINORITY INSTITUTIONS**

(Revised March 31, 2003)

226.7000 Scope of subpart.

This subpart implements the historically black college and university (HBCU) and minority institution (MI) provisions of 10 U.S.C. 2323, which—

(a) Set a goal for DoD for each of fiscal years 1987 through 2006 to award five percent of contract and subcontract dollars to small disadvantaged business concerns and HBCU/MIs; and

(b) Require a separate goal, for each of fiscal years 1991 through 2006, as a subset of the five percent goal, for the participation of HBCUs and MIs.

226.7001 Definitions.

Definitions of HBCUs and MIs are in the clause at 252.226-7000.

226.7002 General policy.

The DoD will use outreach efforts, technical assistance programs, advance payments, HBCU/MI set-asides, and evaluation preferences to meet its contract and subcontract goal for use of HBCUs and MIs. In addition, DoD will establish “infrastructure assistance” (e.g., scholarships, faculty development, teaming agreements with defense laboratories, and laboratory renovation) at colleges, universities, and institutions that agree to bear a substantial portion of the costs associated with the programs.

226.7003 Set-asides for HBCUs and MIs.

226.7003-1 Set-aside criteria.

Set-aside acquisitions for exclusive HBCU and MI participation when the acquisition is for research, studies, or services of the type normally acquired from higher educational institutions and there is a reasonable expectation that—

(a) Offers will be submitted by at least two responsible HBCUs or MIs which can comply with the subcontracting limitations in the clause at FAR 52.219-14;

(b) Award will be made at not more than ten percent above fair market price; and

(c) Scientific and/or technological talent consistent with the demands of the acquisition will be offered.

226.7003-2 Set-aside procedures.

(a) As a general rule, use competitive negotiation for HBCU/MI set-asides.

(b) When using a broad agency announcement (FAR 35.016) for basic or applied research, make partial set-asides for HBCU/MIs as explained in 235.016.

(c) Follow the special synopsis instructions in 205.207(d)(iii), (iv), and (v).

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(d) Cancel the set-aside if the low responsible offer exceeds the fair market price (defined in FAR Part 19) by more than ten percent.

226.7004 Reserved.

226.7005 Eligibility as an HBCU or MI.

(a) To be eligible for award as an HBCU or MI under the preference procedures of this subpart, an offeror must—

(1) Be an HBCU or MI, as defined in the clause at 252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside, at the time of submission of its initial offer including price; and

(2) Provide the contracting officer with evidence of its HBCU or MI status upon request.

(b) The contracting officer shall accept an offeror's HBCU or MI status under the provision at 252.226-7001, unless—

(1) Another offeror challenges the status; or

(2) The contracting officer has reason to question the offeror's HBCU/MI status. (A list of HBCUs is published periodically by the Department of Education.)

226.7006 Protesting an HBCU or MI representation.

Any offeror or other interested party may challenge an offeror's HBCU or MI representation by filing a protest with the contracting officer. The protest must contain specific detailed evidence supporting the basis for the challenge. Such protests are handled in accordance with FAR 33.103 and are decided by the contracting officer.

226.7007 Goals and incentives for subcontracting with HBCU/MIs.

(a) In reviewing subcontracting plans submitted under the clause at FAR 52.219-9, Small Business and Small Disadvantaged Business Subcontracting Plan, the contracting officer shall—

(1) Ensure that the contractor included anticipated awards to HBCU/MIs in the small disadvantaged business goal;

(2) Consider whether subcontracts are contemplated which involve research or studies of the type normally performed by higher educational institutions.

(b) The contracting officer may, when contracting by negotiation, insert in solicitations and contracts a clause similar to the clause at FAR 52.219-10, Incentive Subcontracting Program, when a subcontracting plan is required, and inclusion of a monetary incentive is, in the judgment of the contracting officer, necessary to increase subcontracting opportunities for historically black colleges or universities and minority institutions. The clause should include a separate goal for historically black colleges or universities and minority institutions.

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226.7008 Solicitation provision and contract clause.

(a) Use the clause at 252.226-7000, Notice of Historically Black College or University and Minority Institution Set-Aside, in solicitations and contracts set-aside for HBCU/MIs.

(b) Use the provision at FAR 52.226-2, Historically Black College or University and Minority Institution Representation, in solicitations set aside for HBCU/MIs.